

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

SCHENCK TURNER, INC., A Unit
of SCHENCK CORPORATION¹

Employer

and

CASE 7-RC-21894

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO

Petitioner

APPEARANCES:

Neil M. Frank and Saul D. Zabell, Attorneys, of Farmingdale, New York, for the Employer.

Larry Spencer, of Marlette, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

¹ The Employer's name appears as corrected at the hearing.

² The Employer submitted a brief, which has been carefully considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Employer is engaged in the manufacturing of machinery for the automotive industry at its facility located at 100 Kay Industrial Drive, Orion, Michigan. Currently, the Employer's main product is balancing machines, which it manufactures, installs and services for customers located throughout the United States and abroad. There is no evidence of a history of collective bargaining at the Employer's Orion facility.

The Petitioner seeks to represent a unit consisting of about 28 production and maintenance employees, including machine builders, welders, electricians, quality control employees, shipping and receiving employees, janitorial employees, pipefitters, test floor technicians, and service technicians, but excluding office clerical employees, security employees, contract employees not employed directly by the Employer, and guards and supervisors.³ The Employer's challenge to the appropriateness of the aforesaid unit is centered on the service technicians, whom the Employer would exclude on community-of-interest grounds, and an expeditor and design analyst, whose inclusion the Employer seeks on the same grounds.⁴

The Employer's Orion facility is headed by President and Senior Operations Officer Peter Letsmer. At least five supervisors report directly to Letsmer. They include Purchasing Manager Fred Hoffman, who oversees two shipping and receiving receiving employees as well as the expeditor; Production Supervisor David Moegle, who monitors janitors, assembly workers, welders, machine builders, and quality control employees; Production Supervisor Jack

³ The petition seeks the inclusion of "temporary employees." No reference to "temporary employees" was made at the hearing, nor was evidence adduced regarding them.

⁴ The Employer now employs seven service technicians, one expeditor, and one design analyst.

Norgan;⁵ Production Supervisor Christian Muth, who directs electricians, test floor technicians, and pipefitters; and Customer Service Supervisor Mark Hass, who superintends the seven disputed service technicians.⁶

All of the proposed unit employees, including both the conceded and disputed workers, report to one of the foregoing supervisors. As the titles of the supervisors suggest, even the conceded unit employees transcend departmental lines. Thus, shipping and receiving employees as well as the expeditor are associated with the purchasing department; janitors, assembly workers, welders, machine builders, quality control employees, electricians, test floor technicians, and pipefitters with belong to the manufacturing department; and the disputed service technicians are part of the customer service department.⁷

Service Technicians

Service technicians accomplish at customer sites essentially what machine builders and test floor technicians perform at the Employer's Orion plant. Machine builders, who spend the vast majority of their time working at the Employer's Orion plant, assemble machinery from written plans, test it, "debug" it, and ship it to customers' facilities. Test floor technicians, who also spend the great majority of their time at the Orion plant, perform electrical and mechanical tests on products and fix start-up problems.⁸

At customers' sites, service technicians install the new machinery manufactured by the Employer's production employees, repair and service existing equipment, and perform retrofitting. They also train customer personnel in the operation of the Employer's products, and are encouraged to sell spare and upgraded parts to the customer.⁹ When service technicians are at the Orion plant,

⁵ The exact scope of Norgan's role was not disclosed. It appears that he oversees machine builders and possibly others in the petitioned-for unit.

⁶ The parties neither stipulated to nor challenged the statutory supervisory authority of the individuals just named. It appears from the record that the named individuals possess the authority responsibly to direct employees, and as such are supervisors within the meaning of the Act.

⁷ The Employer has, in addition, a spare parts division consisting of three employees, as well as engineering and documentation departments. The number of statutory employees and/or supervisors assigned to these latter two areas was not covered in the record. Nor was the departmental placement of the design analyst, whom the Employer seeks to include.

⁸ No evidence was adduced concerning in what specific way or at which stage the welders, electricians, pipefitters, and quality control employees, whom both parties would include in the unit, contribute to the manufacturing process.

⁹ The record does not mention whether service technicians derive any extra pay or commission as compensation for generating sales.

they prepare for field assignments by doing subassembly work, as well as electrical and mechanical repairs, on the Orion production floor alongside undisputed unit workers. They also have access to a shared office, separate from the production area, where they may complete paperwork or make small electrical repairs.

If service technicians are at the Employer's plant and have no pressing work for their field missions, they report their availability to manufacturing supervisors and receive regular production assignments, such as moving equipment, assembling component parts, laying down machine bases, drawing plans, and making masters. Service technicians perform these production projects with manufacturing employees. While at the Employer's Orion shop, service technicians also answer technical questions posed by manufacturing personnel. According to the testimony of a production supervisor, service technicians may also spend in-plant time working on drawings in the spare parts or engineering departments, updating manuals in the documentation division, or dealing with purchasing personnel.

An Employer witness who supervises machine builders, but not service technicians, estimated that service technicians spend up to 98% of their time away from the Employer's Orion plant. The one service technician called as a witness testified that he spends 70% of his time outside the Orion plant. The Employer offered undisputed testimony, but no supporting documentation, that service technicians spend about 100 days per year overnight on the road, while production employees spend about 10 days per year out of town.

Customer service supervisor Mark Hass visits customer sites to oversee the work of the service technicians. How frequently he travels or is able to check progress at a given site is not revealed. As noted above, a production employee's job classification determines whether he is supervised at the Orion shop by David Moegle, Jack Norgan, or Christian Muth. Shipping and receiving employees, whom both parties would include in the unit, report to manager Fred Hoffman.

Just as service technicians spend time at the Orion plant, machine builders and test floor technicians spend varying amounts of time doing service technician work at customer locations. One witness, now classified as a service technician, received regular two- and three-week stints as a machine builder to perform service and repair work at customer sites.¹⁰ One current machine builder testified to being asked frequently to work as a service technician in the field. His longest

¹⁰ The record suggests that these assignments took place during a 2-year interval about 1996-1998 when the Employer had dissolved its customer service department, and relied on production workers to perform outside service work. The Employer reinstituted its customer service department about 1998.

such assignment lasted nine days and eight nights. When he is at the Orion plant, service technicians call him at least weekly with technical questions. Another current machine builder has spent two full weekends in the last several months doing service technician work, including diagnostic and repair work, at a customer site in Wixom, Michigan. A third current machine builder described being sent regularly over the last five years to a customer plant in St. Catherine's, Canada, to perform installations and repairs. He spent 12 weeks in 1998 at the same field location to do retrofitting. Two weeks prior to the hearing, he was asked to revisit the same customer for the same purpose. There is further evidence that a fourth machine builder was assigned two weeks before the hearing to make engineering changes at the premises of an out-of-town customer.

A test floor technician who had been working on a particular project for a customer in Doraville, Georgia, spent six weeks beginning in July 2000, installing the machine at the customer's plant. The employee then spent an additional month making service calls at the site. A second test floor technician spent a recent 10-hour workday at a customer site. In the last six months, he has been asked numerous times to perform service technician work in the field, both in the country and abroad.

At least two of the seven current service technicians formerly worked for the Employer as machine builders.

In distinguishing the working conditions of the service technicians, the Employer points to the significant amount of time they spend away from the Orion plant. There is no debate that service technicians spend a much higher percentage of their time in the field than do production employees. However, as the evidence shows, field work is a regular, if less frequent, job duty of machine builders and test floor technicians as well.¹¹ The Employer relies, too, on service technicians'

¹¹ In an attempt to show otherwise, the Employer introduced the time and attendance records of one machine builder for the months of April through October 2000. The hearing officer received the document over the Petitioner's objection. It was not authenticated or introduced through any witness, nor did any witness purport to explain it. In fact, it should be noted that the Employer's counsel described it as the time records of employee David Dubey, while the document itself bears the name of employee Terry Larivee. The document appears to show swipe in- and out-times. However, the document does not show on its face, nor does the record disclose, at what location the employee worked during the swiped-in intervals, nor whether he worked outside of the Employer's plant when not swiped-in, especially on those days marked "Very Early Out." Consequently, no conclusions may readily be drawn, on the basis of the document alone, as to how frequently this employee worked at customer sites. The Employer was expressly permitted by the hearing officer to supplement the record after the close of the hearing with similar time records of a test floor technician. There is no evidence that the Employer served this extra document on the Petitioner, despite its obligation to do so. Moreover, the second time record is more ambiguous than the first. Each page is labeled "field service," giving rise to the possibility that the entire document tabulates hours spent in the field. Many days show swipe-in intervals of less than 10 hours, and numerous days are marked "Very Early Out." These characteristics also suggest that the employee may have worked

interfacing with and training customers, and selling parts. The record is silent on what proportion of service technicians' field time is devoted to training and sales, and how if at all sales affect their compensation. On the other hand, the record demonstrates that machine builders and test floor technicians working in the field also work with and train customers, and advise them on parts sales.

The Employer stresses the role of service technicians in developing product manuals. The supporting evidence is scant. The one service technician who testified stated that he has been asked to review a manual on only one occasion. Conversely, the record demonstrates that manufacturing employees have often assisted in the development of product manuals. One test floor technician testified that he recently updated a specific product manual on his own. Another test floor technician testified that he and fellow test floor technicians frequently answer technical questions about programming, operations, and layout put to them by employees in the documentation department. A machine builder testified that employees writing manuals have approached him about five times with questions on proper technical wording.

The Employer observes that service technicians work under separate supervision in a separate department. However, employees in the uncontested classifications span the departments of purchasing and manufacturing. Moreover, depending upon their job classifications, undisputed unit employees report to four different supervisors. In addition, service technicians working at the Orion plant receive occasional direction by production supervisors, while machine builders and test floor technicians in the field report to Mark Hass, the service technicians' supervisor.

Production employees as well as service technicians are hourly paid. Their hourly rates range from \$18 to \$24. There is no evidence that service technicians are alone at the high end of the range. In fact, among the employees who testified, it was a machine builder who earned the highest hourly rate. Some evidence suggests that during the time that the Employer eliminated its customer service department, machine builders and test floor technicians received a premium of \$1 per hour for off-site service assignments. The record does not show that production employees currently receive a premium for field work, or that service technicians earn less per hour when they work at the Employer's plant.

somewhere other than the Orion plant. Based on the low probative value of either document, and the due process problem associated with the second, I give little if any weight to these exhibits.

The basic workday of production employees at the Orion plant is a 10-hour day shift through the week and a partial day (or days) on the weekend.¹² Service technicians and others working in the field try to conform to the work schedule of the customer's employees, but may work fewer or additional hours as the needs of the customer demand. Production employees' hours are recorded by swiping an electronic card through monitoring apparatus. Service technicians are given the same kind of electronic swipe cards for use at the Employer's plant. Service technicians track their off-site hours themselves by keeping manual records that they fax to an Employer administrator. Machine builders and test floor technicians working in the field manually record and submit their hours in the same fashion.

The Employer offers uniform shirts and slacks to all of its employees. Wearing the uniform apparel is optional, regardless of job classification. The same policies and procedures manual applies to all employees. The record does not point to any difference in fringe benefits between production employees and service technicians. There is evidence that about November 1999, machine builders and service technicians were jointly called into a meeting, at which time changes in their common life and health insurance benefit choices were explained.

The written job description for service technicians sets forth their duties as described herein. It also outlines certain educational and experiential hiring requirements. The record does not reveal how strictly the Employer adheres to those hiring requirements or whether the same duties and requirements are expected of other classifications. One witness, a service technician, testified that the Employer does not demand a more rigorous educational background for service technicians than for production employees. No written job description for any employee classification other than service technician was adduced.

Expeditor

As noted, the current expeditor, Pat Betterly, works in the shipping and receiving department along with two other shipping and receiving employees under Purchasing Manager Fred Hoffman. The expeditor's overarching function is to schedule the delivery of supplies needed in the manufacturing process. To this end, he may seek to modify delivery dates to accommodate a production schedule. Similarly, service technicians may use the expeditor's knowledge of delivery times to plan their service schedule.

¹² The time records for machine builder Terry Larivee, discussed above, show daily hours that vary from 4 to 14.

Unlike the other shipping and receiving employees, the expeditor works from an office in the engineering department and has direct contact with suppliers. The expeditor's hourly wage is between \$18 to \$24.¹³ His hours are tracked with the same kind of electronic swipe-card issued to other hourly employees. The expeditor receives one hour for lunch, in contrast to the 35 minutes granted manufacturing employees. Production employees are afforded a designated 12-minute morning break. The expeditor does not get an official break, but may take one. In other respects, it appears that the expeditor is subject to the same workplace policies and procedures as are other hourly workers.¹⁴

Design Analyst

The incumbent design analyst, Garindar Rehal, specializes in effecting changes in drawings. He is aided in this function by a computer, which he uses in an office shared with electricians and test floor technicians. The nature of the design analyst's work also brings him in contact with machine builders. His exact wage rate was not disclosed, but comes within the \$18 to \$24 parameter described above. He uses the electronic swipe card to record his hours. The design analyst works about 10 hours on weekdays, and, unlike production employees, usually not at all on the weekend. Like the expeditor, he is given one hour for lunch. No evidence was adduced concerning other details of his fringe benefits.

It is axiomatic that nothing in the Act requires the unit for bargaining to be the *only* or *most* appropriate unit. Rather, the Act demands simply that the unit be *an* appropriate one to insure employees the fullest freedom in exercising the rights guaranteed by this Act. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). There is often more than one way in which employees may appropriately be grouped. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-423 (4th Cir. 1963), *cert. denied* 375 U.S. 966 (1964). A petitioner's desire as to the unit is always a relevant, but may not be a dispositive, consideration. *Airco, Inc.*, 273 NLRB 348 (1984). While the Act precludes unit determinations based solely upon the extent of a petitioner's organization, *NLRB v. Morganton Hosiery Co.*, 241 F.2d 913 (4th Cir. 1957), the desires of employees with respect to their unit placement may be a factor that "would 'tip the scales.'" *NLRB v. Ideal Laundry & Dry Cleaning Co.*, 330 F.2d 712, 717 (10th Cir. 1964).

¹³ The Employer declined to furnish specific rates.

¹⁴ Manufacturing employees receive 24 hours (presumably in a year, although the period was not specified) that they may be absent. The hours are unpaid, but count as worked hours for overtime purposes. The record is unclear as to the number of paid leave days accorded to employees in the various disputed classifications.

A major beacon in arriving at an appropriate unit finding is the community of duties and job interests of the employees involved. *South Prairie Construction Co. v. Local 627 Operating Engineers*, 425 U.S. 800, 805 (1976); *Berea Publishing Co.*, 140 NLRB 516, 518 (1963). Factors affecting a community-of-interest analysis include degree of functional integration, *Seaboard Marine Ltd.*, 327 NLRB No. 108 (Feb. 5, 1999); commonality of supervision, *Harron Communications*, 308 NLRB 62 (1992); employee skills and functions, *J. C. Penney Co.*, 328 NLRB No. 105 (June 18, 1999); interchangeability and contact, *Purity Supreme, Inc.*, 197 NLRB 915 (1972); work situs, *Bank of America*, 196 NLRB 591 (1972); and general working conditions, *Allied Gear & Machine Co.*, 250 NLRB 679 (1980).

Service technicians spend the large majority of their time in the field. However, employees who spend most of their time away from the plant may be included in a plantwide unit if, as here, the petitioner is willing to represent such a unit and no other union seeks to represent them separately. *Marks Oxygen Co. of Alabama*, 147 NLRB 228, 230 (1964). The appropriateness of inclusion is more compelling in this case, given the close community of interest on other bases. Service technicians, machine builders, and test floor technicians share interrelated job functions and almost identical job skills. Their knowledge and experience are so fungible that they are deployed interchangeably. Thus, in times of peak service demand, machine builders and test floor technicians augment the service staff, while service technicians supplement the manufacturing staff during less busy times. Even while on the road, service technicians remain in contact with machine builders to resolve technical problems.

Service technicians are subject to the same set of Employer policies and procedures as, and enjoy wages and benefits comparable to, the undisputed unit employees. Although assigned to different departments, service technicians, machine builders, and test floor technicians are commonly supervised when service technicians work in the plant, or when machine builders and test floor technicians work in the field. That service technicians usually report to their own supervisor is less meaningful here, where the agreed-upon unit already consists of employees reporting to four different supervisors. At any rate, difference in supervision is not a per se basis for excluding employees from an otherwise appropriate unit. *Texas Empire Pipe Line Co.*, 88 NLRB 631 (1950).

The Employer cites *Nightingale Oil v. NLRB*, 905 F.2d 528 (1st Cir. 1990), as authority for the exclusion of service technicians. In *Nightingale*, the Court approved the Board's finding that oil burner servicemen could appropriately be grouped in a unit separate from drivers and office clericals. It should be noted that the Board and Court found merely that the separate unit was *an* appropriate one, not that it was the *only* appropriate unit. Further, it was of significance in

Nightingale that the oil burner servicemen had unique skills and, unlike the other classifications, were licensed by the State. I conclude that *Nightingale* does not undermine the appropriateness of the Petitioner's sought unit.

I find that the distinctions between service technicians and the undisputed employees are outweighed by the similarities of their functions and skills, the contact between service technicians and manufacturing employees, and the equivalence of their wages and benefits. *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951) (weight assigned by Board to each factor it has fairly considered is a matter for it to determine); *Friendly Ice Cream Corp. v. NLRB*, 705 F.2d 570, 575 (1st Cir. 1983) (same). Accordingly, I find it appropriate to include the service technicians in the overall unit.

The expeditor shares a common job function and common supervision with unit shipping and receiving employees. The design analyst interacts regularly with unit manufacturing employees. Both of these disputed classifications share wages, benefits, and job conditions similar to those of unit personnel. Excluding the expeditor and design analyst risks the creation of an unwieldy and fragmented residual unit. In deciding upon the configuration of an overall unit, the Board is normally reluctant to leave a residual unit of employees that could also be included in the larger group. *Huckleberry Youth Programs*, 326 NLRB 1272, 1274 (1998). I therefore find that the expeditor and design analyst are properly included in the production and maintenance unit.

5. Accordingly, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees employed by the Employer at and out of its facility at 100 Kay Industrial Drive, Orion, Michigan, including machine builders, welders, electricians, quality control employees, shipping and receiving employees, janitorial employees, pipefitters, test floor technicians, service technicians, expeditors, and design analysts; but excluding office clerical employees, security employees, contract employees not employed by the Employer, and guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 16th day of November, 2000.

(Seal)

/s/William C. Schaub, Jr.

William C. Schaub, Jr., Regional Director
National Labor Relations Board
Region Seven
Patrick V. McNamara Federal Building
477 Michigan Avenue
Detroit, Michigan 48226-2569

440-1760-7660

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO

LIST OF VOTERS¹⁵

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **November 24, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by: **November 30, 2000**.

Section 103.20 of the Board's Rule concerns the posting of election notices. Your attention is directed to the attached copy of that Section.

¹⁵ If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.